RSC
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Legislative Bulletin……………………………..…...……..……April 2, 2001

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H.R. 8—Death Tax Elimination Act of 2001 (Thomas)

Order of Business: This bill will be considered on Wednesday, April 4, 2001, subject to a rule.

Summary: H.R. 8 would repeal the estate (i.e. "death"), gift, and generation-skipping transfer (GST) taxes after December 31, 2010. Currently, the estate and gift taxes operate off the same rate table, ranging between 18% (for taxable estates and gifts below $10,000) and 55% (for taxable estates and gifts over $3 million). A 5% surcharge currently applies to estates and gifts over $10 million. Effective immediately, this bill would eliminate the 5% surcharge and bring the top rate down to 50% for taxable estates and gifts over $2.5 million. Then, this bill would reduce the schedule of estate and gift tax rates by the following number of percentage points (relative each year to the rates in 2001):

Calendar Year	Percentage Point Reduction
2004	1
2005	2
2006	3
2007	5
2008	7
2009	9
2010	11
2011	Full Repeal

The current unified tax credit of $675,000 (covering estate and gift taxes) is replaced with a unified exemption according to the following schedule:

Calendar Year	Unified Exemption
2002 and 2003	$700,000
2004	$850,000
2005	$950,000
2006 and after	$1,000,000

Once the estate tax is repealed beginning in 2011, the "carryover basis" for determining the value of assets passed on to family would come back into effect (it has been repealed since 1976). That is, those who inherit assets would have to pay capital gains tax on the increase in the value of those assets that accrued before death. Up to $1.3 million would be exempt from the new capital gains tax, and a surviving spouse could exempt up to $4.3 million. Gifts received by the deceased three years prior to death would be exempt from the capital gains tax.

Several modifications to the GST would also come into effect:

- All transferred property by "indirect skip" would be counted towards the individual's GST exemption of $1 million unless specifically filed otherwise.
- If a qualified trust is severed, the resulting trusts would be treated as separate trusts.

The bill would also direct the Secretary of the Treasury to prescribe by regulation the circumstances and procedures for extensions for making an allocation of a GST exemption (or an election not to allocate). The permissible number of partners or shareholders in a business for eligibility for an extension of estate tax payments would be raised from 15 to 75.

Additional Background: This bill is essentially the same bill passed by the 106th Congress (roll call #254) and vetoed by President Clinton. The House failed to override the President's veto (roll call #458).

Concerns: Members might be concerned that the repeal of the estate tax would resurrect the "carryover basis," for this would supplement one tax for another. When the "carryover basis" was implemented in 1976, it caused so many problems (mainly problems in determining the basis value of inherited property for purposes of a capital gains tax) that Congress repealed it in 1980 (Public Law 96-223). In fact, in the 96th Congress, a bill to **repeal** the "carryover basis" (H.R. 13) was co-sponsored by Reps. Dick Cheney, Bill Thomas, Phil Crane, Chuck Grassley, Trent Lott, Henry Hyde, Jack Kemp, and 170 others.

Cost to Taxpayers: The Joint Committee on Taxation (JCT) reports that H.R. 8 would save taxpayers $4.0 million in 2002, $42.0 billion through 2006, and $192.8 billion through 2011. However, the new capital gains tax with the "carryover basis" would become effective in 2011, beyond which the JCT does not score.

Does the Bill Create New Federal Programs or Rules?: Yes, but only the directing of the Secretary of the Treasury to prescribe by regulation the circumstances and procedures for extensions for making an allocation of a GST exemption (or an election not to allocate).

Constitutional Authority: Though no committee report is available at the time of this writing, when H.R. 8 was reported in the 106th Congress, the Committee cited Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises") and the 16th Amendment (income tax).

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